

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 7
11201 RENNER BOULEVARD
LENEXA, KANSAS 66219

2016 FEB 29 AM 9:55

BEFORE THE ADMINISTRATOR

IN THE MATTER OF:)	
)	Docket No. CWA-07-2015-0072
JOY DEVELOPMENT PROPERTIES, LLC)	
and)	
SUMMIT CONCRETE, INC.)	
)	COMPLAINT and
)	CONSENT AGREEMENT/
Respondent,)	FINAL ORDER
)	
Proceedings under Section 309(g) of the)	
Clean Water Act, 33 U.S.C. § 1319(g))	
_____)	

COMPLAINT

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 309(g) of the Federal Water Pollution Control Act, commonly referred to as the Clean Water Act ("CWA"), 33 U.S.C. § 1319(g), and in accordance with the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits ("Consolidated Rules"), 40 C.F.R. Part 22.

2. Complainant, the United States Environmental Protection Agency, Region 7 ("EPA") and Respondents, Joy Development Properties, LLC and Summit Concrete, Inc., have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) and (3) of the Consolidated Rules, 40 C.F.R. §§ 22.13(b) and 22.18(b)(2) and (3).

3. This Complaint and Consent Agreement/Final Order serves as notice that EPA has reason to believe that Respondents, Joy Development Properties, LLC and Summit Concrete, Inc., have violated Section 301 of the CWA, 33 U.S.C. § 1311, and a permit issued pursuant to

Section 402 of the CWA, 33 U.S.C. §§ 1342, and 1342, and regulations promulgated thereunder.

Parties

4. The authority to take action under Section 309(g) of the CWA, 33 U.S.C. § 1319(g), is vested in the Administrator of EPA. The Administrator has delegated this authority to the Regional Administrator, EPA, Region 7, who in turn has delegated it to the Director of the Water, Wetlands and Pesticides Division of EPA Region 7 (Complainant).

5. Respondents Joy Development Properties, LLC, and Summit Concrete, Inc., both corporations incorporated under the laws of the state of Iowa and authorized to conduct business in Iowa.

Statutory and Regulatory Framework

6. The objective of the CWA is to restore and maintain the chemical, physical, and biological integrity of the nation's waters. Section 101(a) of the CWA, 33 U.S.C. § 1251(a).

7. Section 301(a) of the CWA, 33 U.S.C. § 1311(a), prohibits the discharge of pollutants except in compliance with, *inter alia*, a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

8. The CWA prohibits the discharge of "pollutants" from a "point source" into a "navigable water" of the United States, as these terms are defined by Section 502 of the CWA, 33 U.S.C. § 1362.

9. Section 402 of the CWA, 33 U.S.C. § 1342, provides that pollutants may be discharged only in accordance with the terms of a National Pollutant Discharge Elimination System (NPDES) permit issued pursuant to that Section.

10. Section 402(p) of the CWA, 33 U.S.C. § 1342(p), sets forth requirements for the issuance of NPDES permits for the discharge of stormwater. Section 402(p) of the CWA requires, in part, that a discharge of stormwater associated with an industrial activity must conform to the requirements of an NPDES permit issued pursuant to Sections 301 and 402 of the CWA, 33 U.S.C. §§ 1311 and 1342.

11. Pursuant to Section 402(p) of the CWA, 33 U.S.C. § 1342(p), EPA promulgated regulations setting forth the NPDES permit requirements for stormwater discharges at 40 C.F.R. § 122.26.

12. 40 C.F.R. §§ 122.26(a)(1)(ii) and 122.26(c) require dischargers of stormwater associated with industrial activity to apply for an individual permit or to seek coverage under a promulgated stormwater general permit.

13. 40 C.F.R. § 122.26(b)(14)(x) defines “stormwater discharge associated with industrial activity,” in part, as construction activity including clearing, grading, and excavation, except operations that result in the disturbance of less than five (5) acres of total land area which are not part of a larger common plan of development or sale.

14. The Iowa Department of Natural Resources (“IDNR”) is the state agency with the authority to administer the federal NPDES program in Iowa pursuant to Section 402 of the CWA, 33 U.S.C. § 1342. EPA maintains concurrent enforcement authority with authorized states for violations of the CWA.

15. The IDNR issued a General Permit for the discharge of stormwater under the NPDES, General Permit No. 2. This General Permit became effective on October 1, 2012, and will remain effective through October 1, 2017. The General Permit governs stormwater discharges associated with construction activities.

16. Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1), authorizes the issuance of a penalty against any person who violates Section 301 of the CWA, 33 U.S.C. § 1311.

Factual Background

17. Respondents are “persons” as defined by Section 502(5) of the CWA, 33 U.S.C. § 1362(5).

18. At all times relevant to this action, Respondents were the owner(s) and/or operator(s) of the Schutter Farms Addition, which is a 27-acre residential development located at Valley Drive and Spencer Road in Pleasant Valley, Iowa (the Site). Construction activities occurred at the Site beginning around June 2011, including clearing, grading, and excavation which disturbed five or more acres of total land area or which disturbed less than five acres of total land area that was part of a larger common plan of development or sale.

19. Stormwater, snow melt, surface drainage, and runoff water leave the Site and flow through multiple outfall points into Spencer Creek and an unnamed tributary to Spencer Creek. The runoff and drainage from the Site are “stormwater” as defined by 40 C.F.R. § 122.26(b)(13).

20. Stormwater contains “pollutants” as defined by Section 502(6) of the CWA, 33 U.S.C. § 1362(6).

21. The Site has “stormwater discharges associated with industrial activity” as defined by 40 C.F.R. § 122.26(b)(14)(x), and is a “point source” as defined by Section 502(14) of the CWA, 33 U.S.C. § 1362(14).

22. Respondents discharged pollutants into Spencer Creek and an unnamed tributary to Spencer Creek, which are “navigable waters” as defined by CWA Section 502(7), 33 U.S.C. § 1362(7).

23. Stormwater runoff from the construction Site results in the addition of pollutants from a point source to navigable waters, and thus is the “discharge of a pollutant” as defined by CWA Section 502(12), 33 U.S.C. § 1362(12).

24. Respondents’ discharge of pollutants associated with an industrial activity, as defined by 40 C.F.R. § 122.26(b)(14)(x), requires a permit issued pursuant to Section 402 of the CWA, 33 U.S.C. § 1342.

25. Respondent Joy Development Properties, LLC applied for and was issued NPDES permit coverage under the General Permit described in Paragraph 15 above. IDNR assigned Respondent NPDES permit authorization number 20086 - 19856 providing Respondent with NPDES permit coverage through May 1, 2015.

26. Respondent Joy Development Properties, LLC’s permit requires the permittee to develop a Stormwater Pollution Prevention Plan (“SWPPP”) that identifies any contractors that will be used to implement the plan and each contractor or subcontractor must sign a certification statement. Upon signing the certification, the contractor or subcontractor becomes a co-permittee with the owner and other co-permittee contractors.

27. Respondent Summit Concrete, Inc. signed this certification statement, in accordance with Part IV.D.7 of Respondent Joy Development Properties, LLC’s permit, and thus became co-permittees with Joy Development Properties for the Schutter Farm Addition construction Site.

28. Respondents’ permit coverage is for the Schutter Farm Addition construction project located at Valley Drive and Spencer Road in Pleasant Valley, Scott County, Iowa. The total area of the project is approximately 27 acres and the total disturbed area is 9 acres.

29. On May 14, 2014, an EPA representative performed a Construction Stormwater Compliance Evaluation Inspection (hereafter “the EPA inspection”) of the Site under the authority of Section 308(a) of the CWA, 33 U.S.C. § 1318(a), to evaluate Respondent’s management of stormwater at the Site in accordance with its NPDES permit and the CWA. The inspector reviewed Respondent’s records related to its NPDES permit and observed the Site. At

the conclusion of the EPA inspection, Respondent was issued a Notice of Potential Violation indicating that the inspection found that the facility had failed to comply with its NPDES permit.

Allegations

30. The facts stated in Paragraphs 17 through 29 above are herein incorporated.

Inadequate Storm Water Pollution Prevention Plan

31. Condition IV.D.1.B. of Respondents' permit requires that the Site description in the SWPPP include an estimate of the total area of the Site and the area of the Site that is expected to be disturbed by excavation, grading, or other activities.

32. Condition IV.D.1.C. of Respondents' permit requires that the site description in the SWPPP include an estimate of the runoff coefficient of the site after construction activities are completed and existing data describing the soil or the quality of any discharge from the site.

33. Condition IV.D.1.D. of Respondents' permit requires that the site description in the SWPPP include a site map indicating, among other things, the location of structural and nonstructural controls identified in the plan, as well as the location of areas where stabilization practices are expected to occur.

34. Condition IV.D.1.E. of Respondents' permit requires that the site description in the SWPPP include the name of the receiving water(s) and the ultimate receiving water(s).

35. The EPA inspection referenced in Paragraph 29, above, revealed that Respondents' SWPPP did not include the area disturbed, the runoff coefficient, or the unnamed tributary as a receiving stream. In addition, the site maps only document some of the controls identified in the SWPPP for Lots 5 and 7.

36. Respondents' failure to include the required information in the SWPPP violates Respondents' NPDES permit, and as such, violates Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Failure to Implement Storm Water Pollution Prevention Plan

37. Condition IV.D.2. of Respondents' permit requires Respondents' SWPPP to include a description of appropriate controls that will be implemented at the construction site, including at a minimum stabilization practices; structural practices; and post-construction stormwater management practices.

38. Respondents' SWPPP identifies silt fencing, diversion ditches, sediment traps, wattles, socks, matting, rolled erosion control blankets, seeding and mulching, and "any erosion control measures at this time that construction will allow." In addition, it identifies "good housekeeping BMPs" as trash disposal containers, indoor or covered storage, secondary containment techniques, a concrete washout area, an on-site fueling and maintenance area (if needed), and an equipment/vehicle washing area (if needed).

39. Condition VI.M. of Respondents' permit requires Respondents to at all times properly operate and maintain all facilities and systems of treatment and control which are installed or used to achieve compliance with the conditions of this permit and with the SWPPP.

40. Condition IV. of Respondents' permit requires facilities to implement the provisions of the SWPPP required under Part IV as a condition of the permit.

41. The EPA inspection referenced in Paragraph 29, above, revealed that some areas of the Site had no erosion controls, such as at least two locations on Lot 7, the soil stockpile on Lot 8, perimeter areas and transfer pipes on Lot 5, and one outfall point on Lot 9. In addition, some areas had erosion control BMPs that were either inadequately installed or maintained. For example, many areas of silt fence were undercut or inundated with sediment; mulch socks and one sediment trap were overloaded. The lack of BMPs and/or inadequate BMPs resulted in, among other impacts, a sediment trail approximately 25 yards long, 18 feet wide, and 1-3 inches deep into the unnamed tributary on Lot 7; and a sediment trail 54 yards long, 1-2 feet wide, and 1-3 inches deep reaching the unnamed tributary on Lot 5.

42. Respondent's failure to maintain the required BMPs are failures to implement the SWPPP and violations of Respondent's NPDES permit, and as such, violate Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

Failure to Conduct and Document Site Inspections

43. Condition IV.D.4. of Respondents' permit requires qualified personnel (provided by the discharger) to inspect disturbed areas of the construction site that have not been stabilized with a perennial, vegetative cover of sufficient density to preclude erosion at least once every seven calendar days. Condition IV.D.4.B. of Respondents' permit requires that based on the results of the inspection, the description of potential pollutant sources and pollution prevention measures shall be revised as appropriate as soon as practicable after the inspection, and such modifications shall provide for implementation of any changes to the plan within seven calendar days following the inspection.

44. Respondents' SWPPP states that inspections shall be conducted at least once every seven calendar days and within 24 hours of the end of a storm event that is 0.5 inch or greater. It specifies that these inspections shall cover disturbed areas that have not been finally

stabilized, areas used for storage of materials that are exposed to precipitation, structural control measures, and locations where vehicles enter or exit the site.

45. Condition IV. of Respondents' permit requires facilities to implement the provisions of the SWPPP required under Part IV as a condition of the permit.

46. The EPA inspection referenced in Paragraph 29, above, revealed that since 2013, Respondents did not conduct an inspection at least every seven calendar days on at least one occasion; Respondents did not conduct an inspection within 24 hours after a rain event on at least six occasions; and Respondents conducted a timely inspection but did not implement necessary changes to the SWPPP within seven calendar days following the inspection on at least four occasions.

47. Respondent's failure to conduct Site inspections and implement changes at the required frequency are failures to implement the SWPPP and violations of Respondents' NPDES permit, and as such, violate Sections 301(a) and 402(p) of the CWA, 33 U.S.C. §§ 1311(a) and 1342(p), and implementing regulations.

48. Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), it is proposed that a civil penalty be assessed against Respondent for the violations of the CWA identified above, the amount of which is set forth in Paragraph 65 below.

CONSENT AGREEMENT

49. Respondents and EPA agree to the terms of this Consent Agreement/Final Order.

50. Respondents admit the jurisdictional allegations set forth in this Complaint and Consent Agreement/Final Order and agree not to contest EPA's jurisdiction in this proceeding or in any subsequent proceeding to enforce the terms of this Consent Agreement/Final Order.

51. Respondents neither admit nor deny the factual allegations and legal conclusions set forth in this Complaint and Consent Agreement/Final Order.

52. Respondents waive any right to contest any issue of fact or law set forth above, and their right to appeal this Consent Agreement and the accompanying proposed Final Order.

53. Respondents and Complainant all agree to resolve the matters set forth in this Consent Agreement/Final Order without the necessity of a formal hearing and agree to bear their own costs and attorney's fees.

54. In settlement of this matter, Respondents agree to complete the following Supplemental Environmental Project ("SEP"), which the parties agree is intended to secure

significant environmental and/or public health benefits. Respondents shall install a sea retaining wall near Lock & Dam 14 on the Mississippi River in the Quad Cities area, in order to stabilize the banks of the river and prevent erosion, as described in Attachment A which is incorporated herein by reference. All federal, state, and/or local permits and approvals for the SEP shall be obtained no later than 9 months from the effective date of the Final Order, and the SEP shall be completed no later than 12 months from the effective date of the Final Order.

55. The total expenditure for the SEP shall be no less than Seventy-Five Thousand, Sixty-Seven Dollars (\$75,067), in accordance with the specifications set forth in Attachment A. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

56. Within 60 days of completion of the SEP, Respondents shall submit a SEP Completion Report to EPA as follows:

- a. The SEP Completion Report shall contain the following:
 - i. a detailed description of the SEP as implemented;
 - ii. itemized costs, documented by copies of purchase orders, receipts, or canceled checks;
 - iii. a description of the environmental and public health benefits resulting from implementation of the SEP (with a quantification of the benefits and pollutant reductions, if feasible); and
 - iv. certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement/Final Order.
- b. Respondents shall submit all notices and reports required by this Consent Agreement/Final Order by first class mail to the following:

Angela Acord
U.S. Environmental Protection Agency, Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

- c. In itemizing its costs in the SEP Completion Report, Respondents shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders or other documentation

that specifically identifies and itemizes the individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

57. Failure to complete the SEP.

- a. If Respondents make good faith, complete, and timely efforts but are unable to obtain all necessary federal, state, and/or local permits and approvals within 9 months from the effective date of the Final Order, Respondents shall be released from the obligation to complete the SEP and shall instead pay Fifty-Two Thousand, Six Hundred Forty-Two Dollars (\$52,642) within 10 months of the effective date of the Final Order.
- b. Respondents agree to the payment of stipulated penalties as follows:
 - i. In the event that Respondents fail to comply with any of the terms or provisions of this Consent Agreement relating to the performance of the SEP as set forth in Paragraphs 54 and 55 and Attachment A of this Consent Agreement/Final Order, and/or to the extent that the actual expenditures of the SEP do not equal or exceed the cost of the SEP described in Paragraph 55 of this Consent Agreement/Final Order, Respondent shall be liable for stipulated penalties according to the provisions set forth below:
 1. Except as provided in subparagraph b.i.2. of this paragraph, Respondents shall be liable for and shall pay a stipulated penalty to the United States in the amount of Ninety Thousand, Eighty-One Dollars (\$90,081), minus any documented expenditures determined by EPA to be acceptable for the SEP.
 2. If the SEP is not completed in accordance with Paragraphs 54 and 55 and Attachment A of this Consent Agreement/Final Order, Respondents shall not be liable for any stipulated penalty if EPA determines that the Respondents:
 - a. applied for all necessary federal, state, and/or local permits and approvals timely and completely, but did not receive all permits and approvals within 9 months of the effective date of the Final Order. If this occurs, Respondents shall instead make payment according to Paragraph 57.a. above; or

- b. received all necessary federal, state, and/or local permits and approvals; made good faith and timely efforts to complete the project; and certify, with supporting documentation, that at least 90% of the amount of money which was required to be spent was expended on the SEP.
- ii. If Respondents fail to timely and completely submit the SEP Completion Report required by Paragraph 56, Respondents shall be liable for and shall pay a stipulated penalty in the amount of Two Hundred and Fifty Dollars (\$250) per day. This stipulated penalty shall begin to accrue on the first day after the SEP Completion Report is due and continue to accrue through the day the SEP Completion report is submitted.
- iii. The determinations of whether the SEP has been satisfactorily completed and whether Respondents has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.
- iv. Respondents shall pay stipulated penalties not more than fifteen days after receipt of written demand by EPA for such penalties. The method of payment shall be in accordance with the provisions of Paragraph 66 herein. Interest and late charges shall be paid as stated in Paragraph 68 herein.

58. Respondents certify that they are not required to perform or develop the SEP by any federal, state, or local law or regulation; nor are Respondents required to perform or develop the SEP by agreement, grant or as injunctive relief in this or any other case or to comply with state or local requirements. Respondents further certify that Respondents have not received, and are not presently negotiating to receive, credit in any other enforcement action for the SEP.

59. Respondents certifies that they are not parties to any open federal financial assistance transaction that is funding or could be used to fund the same activity as the SEP. Respondents further certify that, to the best of their knowledge and belief after reasonable inquiry, there is no such open federal financial transaction that is funding or could be used to fund the same activity as the SEP, nor has the same activity been described in an unsuccessful federal financial assistance transaction proposal submitted to EPA within two years of the date of this settlement (unless the project was barred from funding as statutorily ineligible). For the purposes of this certification, the term "open federal financial assistance transaction" refers to a grant, cooperative agreement, loan, federally-guaranteed loan guarantee or other mechanism for providing federal financial assistance whose performance period has not yet expired.

60. For federal income tax purposes, Respondents agree that they will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

61. Any public statement, oral or written, in print, film or other media, made by Respondents making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency for violations of the Clean Water Act."

62. The undersigned representatives of Respondents certify that they are fully authorized to enter into the terms and conditions of this Consent Agreement/Final Order and to execute and legally bind Respondents to it.

63. Respondents understand and agree that this Consent Agreement/Final Order shall apply to and be binding upon Respondents and Respondents' agents, successors and/or assigns. Respondents shall ensure that all contractors, employees, consultants, firms or other persons or entities acting for Respondents with respect to matters included herein comply with the terms of this Consent Agreement/Final Order.

64. Respondents certify by signing this Consent Agreement/Final Order that, to the best of their knowledge, Respondents are in compliance with all requirements of Sections 301 and 402 of CWA, 33 U.S.C. §§ 1311 and 1342.

Penalty Payment

65. Respondents agree that, in settlement of the claims alleged in this Complaint and Consent Agreement/Final Order, Respondents shall pay a civil penalty of Fifteen Thousand, Eight Hundred and Fifty-Eight Dollars (\$15,858) within thirty calendar days of the effective date of this Final Order.

66. Respondent shall pay the penalty by cashier's or certified check made payable to "Treasurer, United States of America," and shall deliver the check with a transmittal that identifies the case name and docket number CWA-07-2015-0072 to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
PO Box 979077
St. Louis, Missouri 63197-9000.

Copies of the transmittal letter and the check shall be simultaneously sent to:

Regional Hearing Clerk
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219

and to:

Erin Weekley
Office of Regional Counsel
U.S. Environmental Protection Agency - Region 7
11201 Renner Boulevard
Lenexa, Kansas 66219.

67. No portion of the civil penalty or interest paid by Respondents pursuant to the requirements of this Consent Agreement/Final Order shall be claimed by Respondents as a deduction for federal, state, or local income tax purposes.

68. Interest on any late payment will be assessed at the annual rate established by the Secretary of the Treasury pursuant to 31 U.S.C. § 3717. The interest will be assessed on any overdue amount from the due date through the date of payment. Failure to pay the civil penalty when due may result in the commencement of a civil action in Federal District Court to collect said penalty, together with costs and interest thereon.

Effect of Settlement and Reservation of Rights

69. Respondents' payment of the entire civil penalty pursuant to this Consent Agreement/Final Order resolves all civil and administrative claims pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), for violations alleged in this Complaint and Consent Agreement/Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the CWA or any other applicable law.

70. The effect of settlement described above is conditional upon the accuracy of Respondents' representations to EPA, as memorialized in Paragraph 64 of this Consent Agreement/Final Order.

71. Nothing contained in this Consent Agreement/Final Order shall alter or otherwise affect Respondents' obligations to comply with all applicable federal, state, and local environmental statutes and regulations and applicable permits, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state or local permit.

72. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a

72. Notwithstanding any other provision of this Consent Agreement/Final Order, the EPA reserves the right to enforce the terms of this Consent Agreement/Final Order by initiating a judicial or administrative action pursuant to Section 309 of the CWA, 33 U.S.C. § 1319, and to seek penalties against Respondent or to seek any other remedy allowed by law.

73. With respect to matters not addressed in this Consent Agreement/Final Order, EPA reserves the right to take any enforcement action pursuant to the CWA and its implementing regulations, or any other available legal authority, including without limitation the right to seek injunctive relief, monetary penalties, and damages.

General Provisions

74. The Parties acknowledge that this Consent Agreement/Final Order is subject to the public notice and comment required pursuant to Section 309(g)(4) of the CWA, 33 U.S.C. § 1319(g)(4), and 40 C.F.R. § 22.45.


75. Pursuant to 40 C.F.R. § 22.31(b), this Consent Agreement/Final Order shall be effective upon filing with the Regional Hearing Clerk U.S. Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. All time periods herein shall be calculated therefrom in calendar days unless otherwise provided in this Consent Agreement/Final Order.

76. The State of Iowa has been provided an opportunity to consult with Complainant regarding this matter in accordance with the requirements of 40 C.F.R. § 22.38(b) and Section 309(g)(1) of the CWA, 33 U.S.C. § 1319(g)(1).

77. The headings in this Consent Agreement/Final Order are for convenience of reference only and shall not affect interpretation of this Consent Agreement/Final Order.

78. Respondent and Complainant agree that this Consent Agreement/Final Order may be signed in part and counterpart.


COMPLAINANT:
U.S. ENVIRONMENTAL PROTECTION AGENCY



Karen A. Flounmoy
Director
Water, Wetlands and Pesticides Division



Date



Erin Weekley
Office of Regional Counsel



Date

RESPONDENT:
JOY DEVELOPMENT PROPERTIES, LLC

Michael L Peterson

Name (print)

12-30-2015

Date

Michael L Peterson

Signature

President

Title

RESPONDENT:
SUMMIT CONCRETE, INC.

Ethan Mahler

Name (print)

11/12/15

Date



Signature

President

Title


FINAL ORDER

Pursuant to Section 309(g) of the CWA, 33 U.S.C. § 1319(g), and the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation, Termination or Suspension of Permits, 40 C.F.R. Part 22, the foregoing Consent Agreement resolving this matter is hereby ratified and incorporated by reference into this Final Order.

Respondent is ORDERED to comply with all of the terms of the Consent Agreement. In accordance with 40 C.F.R. § 22.31(b), the effective date of the foregoing Consent Agreement and this Final Order is the date on which this Final Order is filed with the Regional Hearing Clerk.

IT IS SO ORDERED.

2-26-16
Date



Name

CERTIFICATE OF SERVICE

I certify that on the date below, I hand delivered the original and one true copy of this Complaint and Consent Agreement/Final Order to the Regional Hearing Clerk, United States Environmental Protection Agency, 11201 Renner Boulevard, Lenexa, Kansas 66219. I further certify that on the date below I sent by certified mail, return receipt requested, a true and correct copy of the original Complaint and Consent Agreement/Final Order to the following:

R Richard Bittner
Registered Agent, Joy Development Properties, L.L.C.
201 W. Second Street
1000 US Bank Center
Davenport, Iowa 52801

and

Jean Friemel
3118 Woodland Drive
Le Claire, Iowa 52722.

In addition, I certify that I sent by first class mail a true and correct copy of the original Complaint and Consent Agreement/Final Order to:

Adam Troutwine
Polsinelli
900 W. 48th Place, Suite 900
Kansas City, MO 64112

Ted Petersen
Iowa Department of Natural Resources
Field Office #5
401 SW 7th St., Ste. I
Des Moines, IA 50309

and

Deborah Quade
Iowa Department of Natural Resources
Field Office #6
1023 W. Madison
Washington, IA 52353.

Dated this 29 th day of February, 2016.

Kathy Robinson
Name

ATTACHMENT A

Exhibit F – Proposed Supplemental Environmental Project

Project Name. Shoreline cleanup and seawall erection.

Project Type. Environmental restoration and protection; Other: bank stabilization and erosion prevention.

Estimated Cost. \$78,860.00

Estimated Timeframe. Subsequent to permit approval (pending), three (3) months.

Project Details. Summit Concrete, Inc. and Joy Development propose to obtain a Clean Water Act, Section 404 , Nationwide Permit No. 3 and /or Nationwide Permit No. 13 from the U.S. Army Corps of Engineers, a Sovereign Lands Permit from the Iowa DNR and a Flood Plain Development Permit from the City of LeClaire, Iowa for the purpose of cleaning up the shore line, including but not limited to, removing rubbish and rip rap from the land described herein. The permit will also authorize the parties to install a 12” x 4’ (not less than the ordinary high water line) x 450’ seawall. The seawall will be constructed of concrete or other aggregate materials in compliance with applicable regulatory standards and specifications.

The proposed location of the project is Section 9 Township 78 North Range 5 East, 5th PM Scott County, Iowa; Mississippi River mile 494.1-494.5, near Lock and Dam 14.

Expected Environmental Benefit. The primary goal of this project is to benefit the environment of the Mississippi River, and the aquatic ecosystem and wetlands surrounding the project. The seawall is expected to stabilize and protect the riverbank, provide area flood and erosion protection, and enhance the aquatic ecosystem, wetlands and environmental quality of the Mississippi River, in the area.

Other Information. The proposed seawall is similar to the kind and quality of seawalls in this geographic area on the Mississippi River. The project is not an activity or result that is already required by law or is set to become a future requirement. The project is not funded by government contracts, loans or grants. The project does not create a significant market or economic advantage for the parties. The project does not result in the EPA, U.S. Army Corps of Engineers, IDNR or any other federal or state agency controlling funds or implementing the project. While permits (as described above) are required to complete the project, such applications are not believed to augment the relevant agencies’ budgets.

ATTACHMENT A



P.O. Box 578
Bettendorf, IA 52722

Estimate

Date	Estimate #
5/27/2015	1421

Name / Address
EPA C/O Erin Weekly SEP

Project

Description	Qty	Rate	Total
Owner: United States Of America "Army Corps of Engineers" Parcel # 850905623FIA-850905622FIA-850905621FIA (3 Parcels)			
12"x4'-0" sea Wall	425	54.00	22,950.00
12"x4'-0" deadman every 15'	56	54.00	3,024.00
12"x30" Spread Footing	481	22.00	10,582.00
Excavation & Backfill with existing spoils	1	9,200.00	9,200.00
#5 Resteel lf	5,327	2.00	10,654.00
Concrete Placement 5 pours	7	1,100.00	7,700.00
1" Clean Stone for backfill	350	25.00	8,750.00
Cost and Fee to obtain required Permits	1	3,000.00	3,000.00
Rip Rap front wall per IDNR	125	24.00	3,000.00
5% Mark up on Materials & labor			-3,793-
Total			578,860.00

\$75,067-